

Schatz



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Huff & Huff Service Corporation
File: B-233740.5
Date: February 9, 1990

F. Edwin Woodley, for the protester.
Vasio Gianulias, Esq., Office of the General Counsel,
Department of the Navy, for the agency.
Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Bid that fails to include prices for option years is nonresponsive and must be rejected where the invitation requires such prices and provides that they will be evaluated for award.

DECISION

H & H Service Corporation protests the rejection of its bid as nonresponsive to invitation for bids (IFB) No. N62474-88-B-6167, issued by the Department of the Navy for physical security services for various Navy installations.

We deny the protest.

The IFB, as issued on November 10, 1989, provided for a basic performance period of 1 year, and contained a bidding schedule that required bidders to insert a unit price and an estimated cost for all items of work necessary to secure various Navy installations. Subsequently, the Army issued thirteen amendments to the IFB. Amendment No. 0002 revised the bidding schedule by adding two 1-year option periods for the same items of work as were in the basic year period. The IFB provided that an aggregate award would be made to the conforming responsive, responsible bidder offering the most advantageous price to the government for the total of the base and option periods. The IFB further provided that failure to submit bids for all items and quantities listed will be cause for rejection of the bid. Fourteen bids were opened on December 13. H & H was the apparent low bidder

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for the base year, but since H & H did not submit its bid on the revised bid schedule that contained separate line items for the option year prices, H & H failed to include prices for the option years.

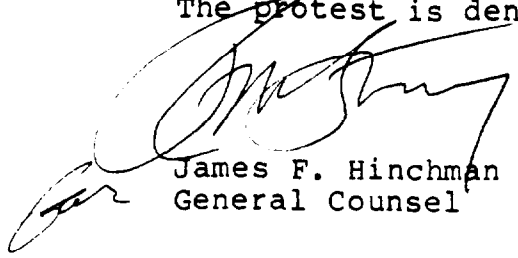
In its protest, filed before rejection of its bid, H & H argued that the Navy should not reject its bid as nonresponsive for failure to submit its bid on the correct bid schedule, because this defect was a minor informality that the Navy should waive. The Navy responded in its report, however, that it rejected H & H's bid, not because H & H used the wrong schedule, but for failure to submit option year prices, as explained above. H & H disagrees generally with the agency's conclusion in its comments to the agency report, and argues that its bid should have been found responsive.

The question of a bid's responsiveness involves whether the bid, at bid opening, represents an offer to comply with the IFB's material terms, which include the requirement for a firm, fixed price. Rozier, Sidbury & Co., Inc., B-216741, Jan. 18, 1985, 85-1 CPD ¶ 58. The requirement for fixed prices extends to options where the IFB requires prices for those items and provides that such prices will be evaluated to determine the awardee. Id. That the government may never exercise the option is not relevant to bid responsiveness where the IFB contemplates a priced, evaluated option that is to be exercised at the government's sole discretion; a bidder's failure to submit prices for the option year usurps the government's prerogative because it leaves the bidder with no obligation to perform any of the option items at any particular price. Id. Such failure essentially gives the bidder an opportunity, not afforded to responsive bidders, to accept or reject the unpriced work after bid opening. Further, because of the lack of obligation to the government and the prejudice to others, option quantity price deficiencies may not be corrected after bid opening. Id.

Since the IFB here states that failure to submit bids for all items and quantities listed in the schedule, including option year prices, will cause rejection of the bid and that the low bid will be determined by evaluating the base and

option prices, H & H's bid, which failed to include prices for either option year, properly was rejected as nonresponsive.

The protest is denied.

A handwritten signature in black ink, appearing to read "J. Hinchman", is written over the typed name and title.

James F. Hinchman
General Counsel